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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,473	08/15/2003	Nikolaus Martin Erlmann	I-24622	3850

4859 7590 12/17/2004

MACMILLAN SOBANSKI & TODD, LLC  
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720 WATER STREET  
TOLEDO, OH 43604-1619

EXAMINER
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BINDA, GREGORY JOHN

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application/Control Number: 10/642,473

Art Unit: 3679

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### NOTICE OF NON-RESPONSIVE AMENDMENT

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on February 16, 2001. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

Applicant alleges in the amendment filed November 22, 2004 that it is unnecessary to file a certified copy of the German priority application in connection with the instant application because a certified copy was filed with the international application. However, since the instant application was not filed under 35 USC 371, a certified copy must be filed in the instant application regardless of whether such a copy was filed with the international application. See MPEP § 1896.

2. This application is not in condition for allowance because the incorporation of essential material in the specification by reference to the German priority document in the cross notes at the first paragraph of the specification is improper. In order to put the application in condition for allowance, applicant must do EITHER of the following:

- a. Provide a certified copy of the German priority document.
- b. Delete the claim for priority to the German application in the cross notes and amend the disclosure to include the material incorporated by reference to the German application that is not already in the specification. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ

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157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

3. The reply filed on November 22, 2004 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): a certified copy of the German priority document that supports the incorporation by reference in the cross notes of the specification.

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Binda whose telephone number is (703) 305-2869. The examiner can normally be reached on M-F 9:30 am to 7:00 pm with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greg Binda  
Primary Examiner  
Art Unit 3679